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In the Supreme Court of the United States

October Term, 1970
No. 727

WILLIAM P. SAILER, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF THE PHILADELPHIA COUNTY BOARD OF ASSISTANCE AND STANLEY A. MILLER, INDIVIDUALLY AND AS SECRETARY OF THE DEPARTMENT OF PUBLIC WELFARE OF THE COMMONWEALTH OF PENNSYLVANIA,
Appellants

vs.

ELSIE MARY JANE LEGER, BERYL JERVIS,
Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

JURISDICTIONAL STATEMENT

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SUBJECT INDEX

	PAGE
Jurisdictional Statement	1
Opinion Below	2
Jurisdiction	3
Statutes Involved	4
Questions Presented	4
Statement of Facts	5
The Questions Are Substantial:	
I. Does Section 432(2) violate the equal protection clause of the Fourteenth Amendment?	7
II. Whether the state has an unqualified right in determining what use shall be made of its moneys in the welfare field to restrict such use to citizens	9
III. Whether the effect of the Court's decision requiring assistance be granted to destitute aliens thwarts the intention expressed by the Federal law of not permitting the entrance or continued residence of those who become public charges	12
Conclusion	14
Appendices:	
Appendix "A"—Opinions and Order, July 13, 1970	16
Appendix "B"—Public Welfare Code	43

STATUTE:

Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. 13

Pa. Public Welfare Code, 432(2) (Appendix "B") 3,4

CONSTITUTION:

United States Constitution, 14th Amendment, Section 1 4,7

TABLE OF CITATIONS

CASES:

Cafeteria Workers v. McElroy, 367 U.S. 886 (1961) 11

Danridge vs. Williams, 397 U.S. 471 (1970) 8

Florida Lime and Avocado Growers, Inc. vs. Jacobsen, 362 U.S. 73, 75, 76 (1960) .. 4

Goldberg vs. Kelly, 397 U.S. 254 (1970) .. 11

King vs. Smith, 392 U.S. 309, 20 L. Ed. 2d 1118, 88 S. Ct. 2128 (1968) 7,8

McCready vs. Virginia, 94 U.S. 391 (1877) .. 10

People vs. Crane, 214 N.Y. 154, 108 N.E. 427 (1915), aff'd sub nom. Crane vs. New York, 239 U.S. 195 (1915) 9,10

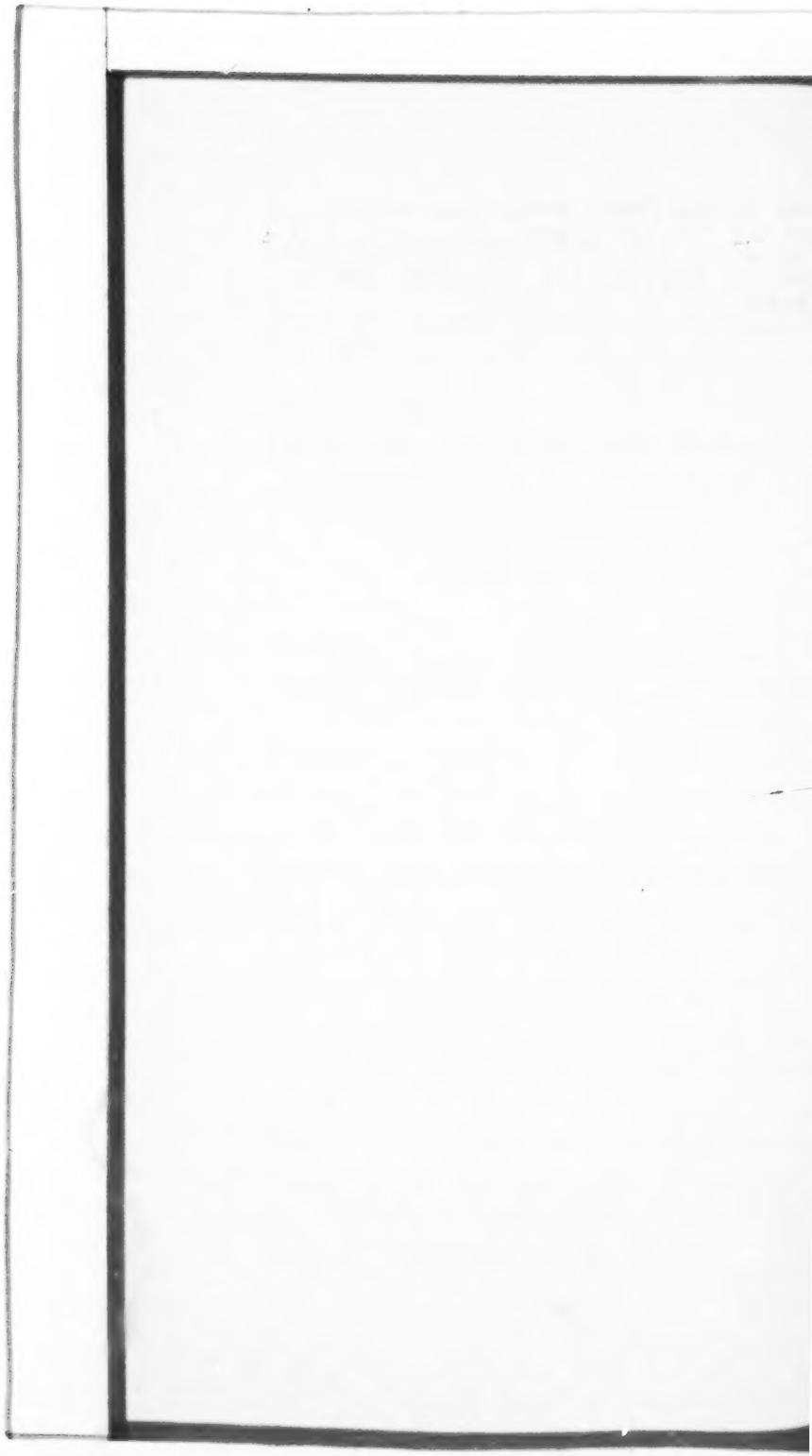
Shapiro vs. Thompson, 394 U.S. 618 (1969) 8,11

Takahashi vs. Fish and Game Commission, 334 U.S. 410, 420 (1948) 7, 10, 13

Truax vs. Raich, 239 U.S. 33 (1915) 10, 13

U. S. vs. Georgia Public Service Commission, 371 U.S. 285, 287 (1963) 3, 4

Yick Wo vs. Hopkins, 118 U.S. 356, 369 (1886) 7



IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1970
No.

William P. Sailer, as Executive Director of the Philadelphia County Board of Assistance et al.,
Appellants

vs.

Elsie Mary Jane Leger et al.,
Appellees

Appeal of the United States District Court for the Eastern District of Pennsylvania.

JURISDICTIONAL STATEMENT

JUDGMENT APPEALED FROM

Appellants, William P. Sailer, Executive Director of the Philadelphia County Board of Assistance, Stanley A. Miller, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, appeal from the final judgment and order of the specially constituted United States District Court for the Eastern District of Pennsylvania. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The Opinion of the United States District Court for the Eastern District of Pennsylvania which is the subject of this appeal is not yet reported. A copy of the Opinion is attached hereto as Appendix "A".

JURISDICTION

This action was brought by appellee (plaintiff) as an individual action in the U.S. District Court for the Eastern District of Pennsylvania under 28 U.S.C. Section 1343(3) and (4) and 42 U.S.C. Section 1983 and 28 U.S.C. 2201, 2202 as an action for declaratory judgment and preliminary and permanent injunctions to declare Section 432(2) of the Pennsylvania Public Welfare Code, 62 P.S. 432(2) unlawful and unenforceable as it contravenes the United States Constitution.

The action was subsequently amended to include a second plaintiff and the Court further permitted a motion to constitute the action a class action.

A special three-judge court was convened to determine the cause pursuant to 28 U.S.C. Section 2281 et seq. In due course the matter was heard by the three-judge court. An opinion was rendered on July 13, 1970 in favor of the appellees and all other members of the class and an order was entered pursuant to the opinion on the same date. From this judgment the appellants (defendants) have appealed.

The jurisdiction of the Supreme Court to review by direct appeal is conferred by 28 U.S.C. 1253.

The following decisions sustain the jurisdiction of the Supreme Court to review a judgment on direct appeal from a three-judge district court: ***United***

Notice of the Appeal as required by the Rules of this Court were filed and served on August 6, 1970.

States vs. Georgia Pub. Serv. Comm'n., 371 U.S. 285, 287 (1963): *Florida Lime and Avocado Growers, Inc. vs. Jacobsen*, 362 U.S. 73, 75-76 (1960).

STATUTES INVOLVED

Pennsylvania Public Welfare Code, Section 432 (2) as is set out in Appendix "B" hereto.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

I. Whether Section 432 (2) of the Public Welfare Code of Pennsylvania is unconstitutional because it allegedly violates the Fourteenth Amendment, Section 1, to the United States Constitution.

II. Whether the state has an unqualified right in determining what use shall be made of its moneys in the welfare field to restrict such use to citizens.

III. Whether the effect of the Court's decision requiring assistance be granted to destitute aliens is not inconsistent with the intention expressed by the Federal law of prohibiting the entrance or continued residence of those who become public charges.

STATEMENT OF FACTS

Appellees are members of a class of aliens residing within the Commonwealth of Pennsylvania who would otherwise be eligible for general assistance in Pennsylvania but for the statutory provision providing that such general assistance is payable only to citizens of the United States.

Appellee Elsie Mary Jane Leger entered the United States on May 18, 1965, having come here from Alford, Scotland, to undertake domestic work in Havertown, Pennsylvania. She subsequently entered into a common-law marriage with an American citizen who together with her applied for public assistance. Assistance was granted to her common-law husband but denied to her as she was not eligible for any Federal category of assistance and while eligible in other respects for general assistance she was not a citizen of the United States and such assistance was accordingly denied.

Appellee, Beryl Jervis, a citizen of the Republic of Panama entered the United States on March 1, 1968. She was employed in several positions but subsequently ceased employment due to alleged reasons of health. She thereupon applied for assistance but she also was ineligible for any Federal category of assistance and while eligible in other respects for general assistance she was not a citizen of the United States and such assistance was accordingly denied.

In the Commonwealth of Pennsylvania there are two major public assistance programs. One is known

as categorical assistance for which slightly over half of the funds are supplied by the Federal Government. This federally supported program provides aid to the blind, aid to the aged, aid to the permanently and totally disabled and aid to families with dependent children. Aliens, assuming they are eligible in other respects, are eligible for this categorical assistance.

Secondly, Pennsylvania has another assistance program to provide assistance to those who are not eligible for any of the categorical assistance programs but who are otherwise in need. This program is known as general assistance and is financed entirely with state funds and is limited to citizens of the United States.

THE QUESTIONS ARE SUBSTANTIAL

I. Does Section 432(2) violate the equal protection clause of the Fourteenth Amendment?

It must be made abundantly clear at the outset that this case does not involve and the lower Court did not find that it involved the "invidious discrimination" as condemned by the Supreme Court in *King vs. Smith,* 392 U.S. 309, 20 L. Ed. 2d 1118, 88 S. Ct. 2128 (1968). The state is not discriminating here with respect to any particular race or nationality but its prohibition applies with equal force to all nationalities. The distinction which the state concedes is that between citizens of the United States on the one hand and aliens, regardless of race, creed or national origin on the other.

The parties to this proceeding agreed at the outset that as a general proposition, the word person in the Fourteenth Amendment includes resident aliens, and that therefore aliens are entitled to the same substantive and procedural benefits of the Amendment as citizens. *Yick Wo vs. Hopkins,* 118 U.S. 356, 369 (1886). However, there are certain well-recognized judicially established exceptions to the general proposition.

The Supreme Court further observed in *Takahashi vs. Fish and Game Commission,* 334 U.S. 410, 420 (1948), that aliens are protected by 42 U.S.C. 1981

(formerly Section 41 of the Nationality Act, 8 U.S.C. §41) which provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the *full and equal benefit of all laws and proceedings for the security of persons and property* as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." (Emphasis supplied.)

It is patently obvious that the Court in the instant case was not dealing with a discriminatory statute for the security of persons or property and therefore the relevance of the Federal Law to this proceeding appears somewhat ambiguous. Whether public assistance is deemed a privilege or a statutory right of entitlement it is not property within the sense of that term as used in the statute and the Supreme Court has not so held insofar as we are able to ascertain.

The lower Court seemed greatly concerned over finding or rather failing to find what in its opinion would be a "compelling state interest" in the language of the Supreme Court in *King vs. Smith,* supra, and *Shapiro vs. Thompson,* infra. It is submitted, however, that the Supreme Court has now made it clear in the recent case of *Dandridge vs. Williams,* 397 U.S. 471 (1970), that the "compelling state interest test" and the procedural results of that test,

"strict judicial scrutiny", are reserved for those cases based upon suspect criteria or invidious discrimination and that the rational or reasonable test is appropriate in all other situations in which constitutionality comes into question with respect to Welfare legislation.

The Commonwealth's position is that the type of preference in question has been countenanced by the Supreme Court and that no decision has been found which by innuendo or otherwise has overruled the "Special Public Interest" doctrine.

II. Whether the State has an unqualified right in determining what use shall be made of its moneys in the welfare field to restrict such use to citizens?

The "Special Public Interest Doctrine" was perhaps best set forth in the opinion rendered by Judge Cardozo in *People vs. Crane,* 214 N.Y. 154, 108 N.E. 427 (1915), aff'd. sub nom. *Crane vs. New York,* 239 U.S. 195 (1915).

Crane upheld a New York statute which prohibited aliens from working on construction projects paid for with government funds.

The Court in *Crane* noted that discrimination was involved and so stated.

> ". . . To disqualify aliens is discrimination, indeed but not arbitrary discrimination, for the principle of the exclusion is the restriction of

> the resources of the State to the advancement and profit of the members of the State. Ungenerous and unwise such discrimination may be, it is not for that reason unlawful." *People vs. Crane,* supra at 429.

The lower Court has found an overruling *sub silentio* of this decision by *Truax vs. Raich,* 239 U.S. 33 and *Takahashi vs. Fish and Game Commission,* supra.

We would submit that in finding, thus, the lower Court has read something into these latter decisions which is just not there.

First of all, Justice Hughes in the *Truax* case specifically recognized the Special Public Interest Doctrine as an exception to the ordinary tests of discrimination when he stated, "This discrimination defined by the Act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the State, *the enjoyment of which may be limited to its citizens as against both aliens and citizens of other states." Truax vs. Raich,* supra, at 39 and 40. See also *McCready vs. Virginia,* 94 U.S. 391 (1877).

It was only after recognizing that the statute in question dealt with private enterprise that Justice Hughes commenced the discussion of whether there was a violation of equal protection.

Furthermore, Justice Black also recognized the principle thirty-two years later in *Takahashi vs. Fish Comm'n,* supra. While the claim of California that the preservation of fish within its three mile border

was of "Special Public Interest" was rejected by the Court, there is no doubt that the Supreme Court recognized the existence of such a doctrine as Justice Black stated in the opinion, "However, the Court there [Truax case] went on to note that it had on occasion sustained state legislation that did not apply alike to citizens and noncitizens, the ground for the distinction being that such laws were necessary to protect special interest either of the state or the citizens as such."

It is difficult to conceive how the lower Court found in *Shapiro vs. Thompson,* 394 U.S. 618 (1969), or *Goldberg vs. Kelly,* 397 U.S. 254 (1970), an indication that the Supreme Court has overruled the Special Public Interest Doctrine which is basically that a state, absent a special state interest, is not permitted to intrude upon an alien's right to enter and abide by statutes which discriminate against them as opposed to citizens in the conduct of *ordinary private enterprise;* the state as proprietor of the resources of the citizens of the state may favor its own citizens in the disbursement of those resources. This distinction in fact was recognized and apparently approved by the Supreme Court as recently as 1960 in *Cafeteria Workers vs. McElroy,* 367 U.S. 886 (1961).

The lower Court has also by its holding cast grave doubt on a number of other state statutes which were cited to it in which a distinction is drawn between aliens and citizens. Hunting and fishing privileges are licensed at different rates depending on whether alien or citizen; Workmen's Compensation is paid

only at a 50% rate to aliens. True, these statutes although called to the Court's attention were not at issue in the cause and their validity or lack thereof was not decided. It follows by necessary inference, however, that if the Special Public Interest Doctrine is, as the lower Court intimated it was, overruled sub silentio the grounds upon which these statutes are based is indeed shaky.

Finally, assuming arguendo that it was the Supreme Court's intention to overrule all authority to the contrary dealing with an individual's right to earn a living, whether in public works, fishing or any other private enterprise, it is still difficult to imagine that the Court was equating this country's time-honored tradition of the opportunity to earn a living with the "right" to receive Welfare.

III. Whether the effect of the decision of the lower Court requiring general assistance be granted to destitute aliens is not in fact inconsistent with the expressed intent of Federal Law of prohibiting the entrance or continued residence of those who are or become public charges?

That Federal law has preempted the field with regard to aliens is not questioned. The appellees here contend in the lower Court that Pennsylvania's general assistance statute conflicts with Federal law and therefore was invalid. The lower Court did not rule on the contention.

It was the position of appellants that Pennsylvania's citizenship requirement does not regulate the conduct of aliens or in any way hinder, obstruct or harass aliens but rather only excluded them from an affirmative benefit which the state may or may not decide to dispense to its own citizens. As was observed by Judge Wood in the lower Court, "If the State had no welfare program at all, Federal laws relating to aliens would not be obstructed; it is difficult to see how Federal laws are obstructed any more because the state decides to give welfare payments to its citizens."

An examination of the Immigration and Naturalization Act, 8 U.S.C. 1101 et seq. demonstrates that while the Court in *Truax* and *Takahashi* was correct in holding that a state's refusal to allow aliens an opportunity to earn a living clearly contravened federal policy, it also confirms that Pennsylvania's policy of denying general assistance to aliens does not. Section 1182(a)(7) denies admission to those aliens who have physical ailments which may affect their ability to earn a living. Section 1182(8) denies admission to aliens who are paupers. Section 1182(15) denies admission to aliens, who in the opinion of the Consular officer, or in the opinion of the Attorney General, are likely at any time to become a public charge. Section 1183 allows the Attorney General to require an alien to post a bond prior to being admitted in case he later becomes a public charge. Section 1251 allows the Attorney General to deport an alien under certain conditions who has become a public charge. Thus, Congress by requiring that aliens

before entering this country demonstrate their potential to earn a livelihood and expects the states to allow these persons to fulfill that potential. However, to infer from these same sections, in which Congress has stated its desire to exclude from the country not only paupers but those who are likely to become public charges, that Congress expects the states to provide aliens with welfare out of State funds would be presumptuous to say the least.

Carried one step further, the lower Court has now ordered that the State grant to all aliens within its borders, regardless of whether they arrived yesterday or 10 years ago, general assistance. In effect, have they not said you need no longer worry about Federal statutes regarding paupers for the states are now required by the Constitution to grant you assistance ergo; you cannot therefore be a pauper as you are guaranteed at least this source of income. Such is clearly not the intention of Federal law but appears to be diametrically opposed to it.

CONCLUSION

The questions involved here are substantial and ought to be resolved by this Court. The decision of the lower Court appears to overrule a long line of cases decided by this Court and also casts grave doubt upon the constitutionality of any statute which makes any distinction between aliens and citizens. It is a common known fact that aliens are denied the right to vote in the United States; if the failure to

grant a largesse is a denial of equal protection it might also follow that the denial of another right granted only to citizens is subject to the same attack. The question, therefore, is one of national importance.

Respectfully submitted,
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APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Class Action

Civil Action No. 69-2869

Elsie Mary Jane Leger, Beryl Jervis, on behalf of themselves and all others similarly situated

v.

William P. Sailer, individually and as the Executive Director of the Philadelphia County Board of Assistance

Stanley A. Miller, individually and as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania

OPINION AND ORDER

July 13, 1970

Concurring Opinion, Circuit Judge Adams and District Judge Kraft; Dissenting Opinion, District Judge Wood

The issue in this case is whether Pennsylvania's general assistance program runs afoul of the United

States Constitution because it provides welfare aid to United States citizens residing within the Commonwealth, but denies such aid to persons residing in the Commonwealth who are not United States citizens.

The suit comes before us in the form of a class action. The plaintiffs, representing aliens who meet all other eligibility requirements for general assistance, allege that the Pennsylvania statute denies aliens the equal protection of the laws guaranteed by the Fourteenth Amendment, abridges aliens' freedom of interstate travel, and violates the Supremacy Clause of the Federal Constitution since it clashes with the federal power to regulate immigration and naturalization.

Because plaintiffs sought to enjoin a state statute on constitutional grounds which are not insubstantial, a three-judge court was convened pursuant to 28 U.S.C. §§2281, 2284. [1]

There are two major public assistance programs in Pennsylvania. The larger one is known as categorical assistance. Slightly more than one-half of the funds for this program, which had its genesis in the Social Security Act of 1935, are provided by the Federal Government. The federally supported arrangement includes programs for aid to the blind, aid to the aged, aid to the permanently and totally dis-

[1] The jurisdiction of the Federal Court is invoked under 28 U.S.C. §1343(3) and (4), 42 U.S.C. §1983, 28 U.S.C. §2201, §2202, this being an action for declaratory judgment and preliminary and permanent injunctions to redress the deprivation under color of state law of rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States.

abled and aid to families with dependent children. In Pennsylvania, aliens are eligible for categorical assistance. The other welfare program in Pennsylvania is general assistance. Section 432(2), Pennsylvania Public Welfare Code, 62 P.S. 432(2).[2] This program provides aid for the needy who do not qualify for grants under the categorical assistance provisions. Because of the citizenship requirement in the general assistance statute, residents of Pennsylvania who are not citizens and who have economic need but do not fit into any of the four federal categories cannot obtain state aid.

The sole reason given for excluding aliens from the general assistance legislation is that such a policy saves money or preserves the Commonwealth's financial resources for citizens. We consider this an inappropriate basis to support such a discrimination under the Equal Protection clause.

The applicable provisions of the Fourteenth Amendment extend protection to "all persons", and

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[2] "Section 432. Eligibility.

Except as hereinafter otherwise provided, and subject to the rules, regulations, and standards established by the department, both as to eligibility for assistance and as to its nature and extent, needy persons of the classes defined in clauses (1) and (2) of this section shall be eligible for assistance:

(1) Persons for whose assistance Federal financial participation is available to the Commonwealth • • •.

(2) Other persons who are citizens of the United States, or who, during the period January 1, 1938 to December 31, 1939, filed their declaration of intention to become citizens."

therefore include aliens. As early as 1886 the Supreme Court held that the Equal Protection and the Due Process Clauses are "universal in their application to all persons within the territorial jurisdiction without regard to any differences of race, color or of nationality." Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). See also Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 420 (1948); Truax v. Raich, 239 U.S. 33 (1915). *Cf.* Hellenic Lines Ltd. v. Rhoditis, No. 661 (U.S. Sup. Ct. filed June 8, 1970), slip op. at 4. Although the Fourteenth Amendment does not prohibit all classifications in state laws, it requires that such classifications between groups of persons have a legitimate state objective, and that the distinction drawn have a rational basis to effectuate that purpose. *E.g. McGowan v. Maryland,* 366 U.S. 420 (1961). *See Developments in the Law—Equal Protection,* 82 Harv. L. Rev. 1082-1087 (1969). The policy of upholding a discriminatory state law provided there is some reasonable basis to do so applies to welfare legislation as well as other state economic or social regulations. Dandridge v. Williams, 397 U.S. 471 (1970). When, however, state legislation in any field—social, economic or political—evidences an intent to discriminate on a basis of race, color, or nationality, the state bears a very heavy burden to justify it.[3] Discrimination on the basis of alienage, even though not a discrimination against a particular nationality, affects a "disadvantaged minority"

[3] *See e.g.* Dandridge v. Williams, 397 U.S. at 485, n. 17; Loving v. Va., 388 U.S. 1, 9 (1967); McLaughlin v. Fla., 379 U.S. 184, 191-92 (1964). Korematsu v. United States, 323 U.S. 214, 216 (1944).

and is therefore subject to strict judicial scrutiny. Takahashi v. Fish & Game Comm'n, 334 U.S. at 420.

In *Takahashi*, the Supreme Court specifically compared discrimination based on alienage with discrimination based on color. The Court said that "the Fourteenth Amendment * * * protect[s] 'all persons' against state legislation bearing unequally upon them either because of alienage or color", and that "the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits." 334 U.S. at 420. [4]

In *Hobson v. Hansen*, Judge Wright explained that "[T]he Supreme Court has been vigilant in erecting a firm justification principle against every legal rule which isolates for differential treatment a disadvantaged minority, whether defined by alienage, * * * nationality * * *; or race * * *." 260 F. Supp. 401, 506-7 (D.D.C. 1967) aff'd sub nom Smuck v. Hobson, 408 F. 2d 176 (D.C. Cir. 1969). [5]

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[4] In *Takahashi* the Supreme Court also stated (334 U.S. at 419-20) that aliens are protected by 42 U.S.C. §1981 (formerly Section 41 of the Nationality Act, 8 U.S.C. §41) which provides: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other".

[5] *Takahashi* has been cited a number of times to illustrate a classification which is "inherently suspect". *See* Kra-

The reason advanced for the citizenship requirement—saving or preserving public funds—is not compelling when we consider the severity of the deprivation imposed upon the excluded group. Those excluded are deprived of the "means to subsist—food, shelter, and other necessities of life". Shapiro v. Thompson, 394 U.S. at 618, 627 (1969). Though a state is not obligated to grant public assistance, the Supreme Court in Goldberg v. Kelly, 397 U.S. 254 (1970), clearly recognized the significance of such aid when it said: "Public Assistance is * * * not mere charity, but a means to 'promote the general Welfare and secure the Blessings of Liberty to ourselves and our Posterity.'" 397 U.S. at 265.

In Shapiro v. Thompson, 394 U.S. at 627, the Supreme Court held that the interest of economy was an insufficient foundation to justify the denial of welfare benefits to persons who resided within the state for less than one year. In holding the state residency requirements for welfare eligibility unconstitutional, the Court said that it agreed with the contention that "the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them the equal protection of the laws". 394 U.S. at 627. Mr. Justice Brennan, speaking for the Court, made it abundantly clear that a discrimination which denied welfare benefits to a particular group could

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mer v. Union Free School District, 395 U.S. 621, 628, n. 9 (1969); Harper v. Virginia Board of Elections, 383 U.S. 663, 682, n. 3 (1966); NAACP v. Alabama, 377 U.S. 288, 295 n. 7 (1964).

not be sustained on the ground that such denial saves government funds. [6]

> "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification." 394 U.S. at 633.

In *Goldberg v. Kelly,* the Court repeated the proposition that "these governmental interests [of reducing administrative expenses and preventing the disbursement of funds it could not recover] are not overriding in the welfare context". In *Goldberg,* the Court held that such reasons did not justify the failure to provide a hearing to welfare recipients before aid is terminated. 397 U.S. at 266.

Dandridge v. Williams, one of the most recent Supreme Court cases in the welfare area, does not support the Pennsylvania legislation. Dandridge upheld

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[6] Financial expense has been held an inadequate reason to justify discrimination in the criminal law. *See* Rinaldi v. Yeager, 384 U.S. 305 (1966); Griffin v. Illinois, 351 U.S. 12 (1956).

a state regulation which set a maximum ceiling on the amount of aid for each family regardless of the number of children above a given figure. Although the plaintiffs claimed this created two classes—those with large families and those with small families—the Supreme Court found that the state had valid reasons, namely, to encourage employment and to avoid discrimination between welfare families and the families of the working poor, which provided a "solid foundation for the regulation". 397 U.S. at 486. Dandridge is distinguishable from the present case on two additional grounds: First, the classification between large and small families is not inherently suspect as is one based on alienage; second, the state did not completely exclude a particular group from all benefits—it merely limited the amount of payment per family.

The justification of limiting expenses is particularly inappropriate and unreasonable when the discriminated class is aliens. Aliens like citizens pay taxes and may be called into the armed forces. Unlike the short-term residents in Shapiro, aliens may live within a state for many years, work in the state and contribute to the economic growth of the state. This is illustrated by the stipulated facts in the present case. One of the named plaintiffs here worked in Pennsylvania for four years, until illness forced her to terminate employment.

Pennsylvania's efforts to justify the exclusion here are further weakened when the treatment of aliens in its entire public welfare program is carefully analyzed.

Although the federal statute does not require states to grant assistance to aliens,[7] Pennsylvania permits aliens to participate in its various categorical assistance programs. 62 P.S. §432(1). The categorical programs are substantially larger than the general assistance program. Indeed, figures from the Commonwealth show that approximately 585,000 persons are on categorical assistance and 85,000 on general assistance.[8] Furthermore, in this case, there was evidence that noncitizen applicants for general assistance are less than 100 per year.[9] Accordingly, it is

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[7] In *Richardson v. Graham*, a three-judge court held that a 15 year residency requirement in Arizona for aliens requesting public welfare under Arizona's federally supported programs violated the Equal Protection Clause of the Fourteenth Amendment. No. CIV. 69-158 TUC. (D. Ariz., filed May 27, 1970).

[8] Department of Public Welfare Report of Public Assistance, Dec. 31, 1969.

[9] Although the Pennsylvania statute does not involve the federal social security program, the defendants say that Congress authorized discrimination against aliens in the federal statute when it stated:

> "The Secretary * * * shall not approve any plan which imposes, as a condition of eligibility for aid * * *
>
> * * * * * * *
>
> "(2) Any citizenship requirement which excludes any citizen of the United States. 42 U.S.C. 1202(b)(2) (1964).
>
> See also 42 U.S.C. §1352(b)(2) (disabled); 1382(b)(3) (aged, blind or disabled); §302(b)(3) (aged)."

A similar provision in the federal statute regarding residency was not considered congressional authority to allow one year residency requirements. Shapiro v. Thompson, 394 U.S. at 638-41. The Court in *Richardson v. Graham*, *su-*

difficult to lend credence to the rationale that aliens are denied access to the general assistance program in order to conserve funds.

Pennsylvania attempts to rationalize its discrimination against aliens and contends it is not violating the Fourteenth Amendment because the state has an unqualified right to preserve public money or property for its own citizens. It draws this rule principally from People v. Crane, 214 N.Y. 154, 108 N.E. 427 (1915), aff'd sub nom. Crane v. New York, 239 U.S. 195 (1915).[10] Crane, decided fifty-five years ago, upheld a New York statute which prohibited aliens from working on construction projects paid for with government funds. The validity of this discriminatory legislation today is exceedingly doubtful when the principles enunciated in *Takahashi* are considered.

In *Takahashi,* the Supreme Court refused to uphold a California law which denied commercial fishing licenses to aliens although the Court assumed that the provision was passed "to conserve fish in the California coastal waters or to protect California citizens engaged in commercial fishing from com-

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pra note 7, also rejected an argument which was similar to that made by the Commonwealth.

In the Civil Rights Act of 1964, Congress prohibited discrimination because of national origin in any program receiving federal assistance. 42 U.S.C. 2000(d).

[10] *Crane* was affirmed on the basis of Heim v. McCall, 239 U.S. 175 (1915) which in turn relied on Atkins v. Kansas, 191 U.S. 207 (1903). *But see* Powell, *The Right To Work for the State,* 16 Col. L. Rev. 99, 111 (1916).

petition by Japanese aliens or for both reasons". 334 U.S. at 418. In that decision, the Court held that the state power to apply its laws exclusively to aliens as a class is confined within narrow limits, and thus reduced the range of legislative purposes which can justify "[s]tate laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States". 334 U.S. at 419.

Judge Cardoza's rationale for the decision in *Crane* was in large measure grounded on the theory that public employment is a privilege rather than a right. He said: "The state, in determining what use shall be made of its own moneys, may legitimately consult the welfare of its own citizens, rather than that of aliens. Whatever is a privilege, rather than a right, may be made dependent upon citizenship." 108 N.E. at 430. The "privilege-right doctrine" no longer has vitality as a justification for the deprivation of a constitutional right. The Supreme Court has only recently stated, "the constitutional challenge cannot be answered by the argument that public assistance benefits are a 'privilege' and not a 'right'." Shapiro v. Thompson, 394 U.S. at 627, n. 6; Goldberg v. Kelly, 397 U.S. at 262 and cases cited therein. See also Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 82 Harv. L. Rev. 1439 (1968).

The *Crane* decision, which has not been relied on to uphold anti-alien legislation since it was decided, was rejected as controlling by the California Su-

preme Court sitting *en banc* last year.[11] In Purdy & Fitzpatrick v. California, 456 P. 2d 645, 79 Cal. Rptr. 77 (1969), the California Court held that a section of the Labor Code which prohibited employment of aliens on public works was unconstitutional. That Court could find no " 'special public interest' to justify this discriminatory legislation which encroaches upon the congressional scheme for immigration and naturalization, and violates the equal protection clause of the Fourteenth Amendment". 456 P. 2d at 50, 653. It rejected the theory of an absolute proprietary interest in the disbursement of public funds on the basis of the standard and holding of *Takahashi*.

Pennsylvania also relies on Patsone v. Pennsylvania, 232 U.S. 138 (1914), which allowed a state to preserve game for its own citizens, and on a number of cases upholding restrictions on an alien's right to own property. Terrace v. Thompson, 263 U.S. 197 (1923); Porterfield v. Webb, 263 U.S. 225 (1923); Webb v. O'Brien, 263 U.S. 313 (1923); Frick v. Webb, 263 U.S. 326 (1923). The land cases, questioned by the Supreme Court in *Takahashi* and Oyama v. California, 332 U.S. 633 (1948),[12] are insufficient authority to uphold dis-

[11] Ratti v. Hinsdale Raceway, Inc., 249 A. 2d 859 (N.H. 1969); Garden State Dairies v. Vineland Inc., 46 N.J. 349, 217 A. 2d 126 (1965); Department of Labor & Industries v. Cruz, 45 N.J. 372, 212 A. 2d 545 (1965), *in dicta* all indicate doubt as to the validity of *Crane*.

[12] In *Oyama* four justices said the restrictions were unconstitutional. These cases were by two states to invalidate

criminatory welfare legislation, just as they were insufficient authority to uphold discriminatory employment legislation in *Takahashi* and *Purdy & Fitzpatrick*.

Although there may be an area in which the state may permissibly preserve natural resources for its own citizens by discriminating against aliens, just as it may in such respects discriminate against residents of other states, a discrimination against resident aliens which, as the parties in this case stipulated, "causes undue hardship by depriving them of the means to secure the necessities of life, including food, clothing and shelter", and "discourages continued residence in Pennsylvania of indigent resident aliens and causes such needy persons to remove to other states which will meet their needs", is substantially different and invalid.

Pennsylvania has cited numerous state statutes which discriminate against aliens.[13] These statutes have not been subjected to judicial scrutiny, and we do not decide the validity or invalidity of any of them at this time. We note, however, that the validity of

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their laws. Fjuii v. State, 38 Cal. 2d 718, 242 P. 2d 617 (1952). Kenji Namba v. McCourt, 185 Ore. 579, 204 P. 2d 569 (1949). *See* Comment, *The Alien and the Constitution*, 20 U. Chi. L. Rev. 547, 564-70 (1953). *See also* State v. Oakland, 287 P. 2d 39, 42 (Montana, 1955).

[13] *But see* Limestone Company, Ltd. v. Fagley, 187 Pa. 193 (1898), where the Pennsylvania Supreme Court invalidated a discriminatory tax on alien employees as violative of the Equal Protection Clause of the Fourteenth Amendment.

restrictions on an alien's right to work have been seriously questioned on the basis of *Takahashi*. *See Constitutionality of Restrictions on Aliens' Right To Work*, 57 Col. L. Rev. 1012 (1957); [14] Note, 1947-48 *Term of the Supreme Court: The Alien's Right To Work*, 49 Col. L. Rev. 257 (1949).

We hold that the provision in the general assistance law prohibiting its applicability to residents of Pennsylvania who are not citizens is invalid as violating the Equal Protection clause of the United States Constitution. In view of this decision we consider it unnecessary to pass upon plaintiffs' other contentions that the Pennsylvania statute violates the Supremacy Clause of the Constitution and interferes with the aliens' right to interstate travel.

The above constitutes the findings of fact and conclusions of law required by Rule 52(a). Accordingly, the motion for preliminary and permanent injunction will be granted.

Arlin M. Adams
Circuit Judge
C. William Kraft, Jr.
District Judge

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[14] For a list of law review material discussing the unconstitutionality of the alien's right to work * * *.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

Civil Action No. 69-2869

Class Action

Elsie Mary Jane Leger, Beryl Jervis, on behalf of themselves and all others similarly situated

v.

William P. Sailer, individually and as the Executive Director of the Philadelphia County Board of Assistance

Stanley A. Miller, individually and as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania

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ORDER

On this 13th day of July, 1970, there having been hearing on plaintiffs' motions for preliminary and permanent injunctions and declaratory judgment, such motions having been briefed and argued by counsel, and the majority of this Court having decided in an opinion filed July , 1970, that Pennsylvania's general welfare law, 62 P.S. §432(2), violates the Equal Protection Clause of the United States Constitution, it is ordered and adjudged that the de-

fendants be and are hereby enjoined from enforcing that portion of the Pennsylvania Statute which denies general assistance to persons because of alienage.

Arlin M. Adams
Circuit Judge
C. William Kraft, Jr.
District Judge

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DISSENTING OPINION

Wood, District Judge, July 13, 1970

I must respectfully dissent.

This is a class action brought on behalf of resident aliens to challenge the constitutionality of Section 432(2) of The Pennsylvania Welfare Code, 62 P.S. §432(2) insofar as it denies general public assistance

to persons otherwise qualified to receive it solely on the ground that they are not citizens of the United States.[1] The defendants, who are the state officials charged with administration of the statutory provision which is challenged, concede that the named plaintiffs would qualify for general assistance except for the fact of their alienage, but they maintain that neither federal law nor the constitution precludes the state from denying to aliens that assistance which it dispenses to citizens solely from its own resources.

Plaintiffs first contend that Pennsylvania's citizenship requirement is invalid because it places an undue burden on their right to interstate travel. They place great reliance on *Shapiro v. Thompson,* 394 U.S. 618 (1969) in which the Supreme Court invalidated Pennsylvania's one-year residence requirement for welfare recipients because it "touche[d] on the fundamental right of interstate movement" of citizens and was not justified by any "compelling state interest". However, even assuming *in arguendo* that aliens have the same right in all respects to travel freely between states as do citizens,[2] I do not think

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[1] Since the funds for the general assistance program here challenged are provided entirely by the state and municipalities therein and the program is not supported by federal grants, there is no question presented here of whether the state provisions are in conflict with the Federal Social Security Act or regulations thereunder.

[2] The right to travel between states is not specifically enumerated in the Constitution, but Courts have inferred such a right from several of its provisions. However, when such a right has been mentioned, the Court has referred to it as a right belonging to "citizens". See *Shapiro v.*

that the statutory classification in this case "touches on the fundamental right of interstate movement"[3] in the same respect as the classification proscribed by the Court in *Shapiro* and that the Court in *Shapiro* did not intend its holding to encompass state statutes such as the one before us. In *Shapiro*, it was undisputed and the Court found that the Pennsylvania statute created two classes, the only difference between them being that members of one had been residents of Pennsylvania for a year and members of the other had not, and proceeded to favor the former class on that ground alone. Here, on the other hand, the distinction drawn by the statute in question is be-

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Thompson, 394 U.S. 618, 629, 633, ". . . the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement."; *Edwards v. California*, 314 U.S. 160, 181 (1941) ("The conclusion that the right of free movement is a right of National Citizenship stands on firm ground.") *Passenger Cases*, 7 How. 283, 492 (1849); *Kent v. Dulles*, 357 U.S. 116, 125 (1958); *Ward v. Maryland*, 12 Wall 418, 430 (1871). On the other hand, in *Truax v. Raich*, 239 U.S. 33, 42 (1915) and other cases, the Court has held that aliens lawfully admitted to the country under the authority of acts of Congress have the right to "enter and abide" in the various states. The Court indicated that the alien's right to "enter and abide" stemmed from federal law and not from the Fourteenth Amendment and could therefore be retracted by federal statute. Therefore, it is doubtful that this right to enter and abide of aliens is the same in all respects as the right of citizens to travel between states.

[3] 394 U.S. at 638.

tween aliens and citizens of the United States. Whether an alien is a long-time resident of Pennsylvania or is newly-arrived from another state is irrelevant; plaintiffs are denied welfare by Pennsylvania not because they have traveled to Pennsylvania from another state, but rather because they are aliens.

To extend *Shapiro* by holding that the state statutory classification in this case touches on the "fundamental right of interstate movement" and must be abandoned absent a "compelling" state interest would be to put in jeopardy all state laws which treat a certain group of people less generously than that group is treated by another state, and which therefore might disincline persons of lesser means from travelling into that state. Such a holding would virtually require states to provide indigents moving inside its borders with enough money to stay. I am unable to go so far. Since I would not find that Pennsylvania's classification here touches on the right of interstate movement enunciated in *Shapiro,* I would not reach the question of whether Pennsylvania has demonstrated a "compelling" interest in the classification.

Plaintiffs secondly contend that Pennsylvania's citizenship requirement is invidious and offensive to the equal protection clause. Both parties agree that, as a general proposition, the word "person" in the Fourteenth Amendment includes resident aliens, and that therefore aliens are entitled to the same substantive and procedural benefits of the Amendment as citizens. *Yick Wo v. Hopkins,* 118 U.S. 356, 369 (1886). Further, the plaintiffs concede that in a number of cases in the wake of *Yick Wo* the Court

carved out a number of exceptions to the foregoing general proposition, one among them being that the "moneys of the state belong to the people of the state" and "do not belong to aliens" and therefore the state may favor its citizens to aliens in the distribution of the common property or resources of the people of the state. *McCready v. Virginia*, 94 U.S. 391 (1877). As Justice Cardozo, at the time a member of the New York Court of Appeals, stated in a case involving state preference of citizens over aliens in public works contracts:

> "Every citizen has a like interest in the application of the public wealth to the common good and the right to demand that there be nothing of partiality, nothing of merely selfish favoritism in the administration of the trust. But an alien has no such interest; and hence results a difference in the measure of his right. To disqualify citizens from employment on the public works is not only discrimination but arbitrary discrimination. To disqualify aliens is discrimination indeed, but not arbitrary discrimination, for the principle of exclusion is the restriction of the resources of the state to the advancement and profit of the members of the state. Ungenerous and unwise, such discrimination may be. It is not for that reason unlawful." *People v. Crane*, 108 N.E. 2d 425 (1915).

The decision of the New York Court was thereafter unanimously affirmed by the Supreme Court in an opinion which summarily dismissed as "without foundation" the plaintiffs' claim that the state's pref-

erence of citizens over aliens in public works violated the equal protection clause. *Crane v. New York,* 239 U.S. 195, 199 (1915). See also *Heim v. McCall,* 239 U.S. 175 (1915).[4]

The plaintiffs contend, however, that these early precedents have in effect been overruled *sub silentio* by other decisions. I disagree because I think to the contrary that subsequent decisions have either affirmed or left untouched the Crane doctrine. In *Truax v. Raich,* 239 U.S. 33 (1915), cited by the plaintiffs, the Court held that a state statute providing for discrimination against aliens in matters relating to "ordinary private enterprise" violates the right of aliens to "enter and abide" in that state unless there is a "special state interest" involved and invalidated an Arizona law requiring all private commercial business to have work forces composed of at least 80 per cent United States citizens. The Court found in that case that there was no "special state interest" in such an all-encompassing regulation of "all ordinary private enterprise".[5] In its decision, which was handed down the same year as *Crane,* the Court said

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[4] In which a unanimous court upheld against attack on Fourteenth Amendment grounds a New York statute which provided that "In the construction of public works by the state or a municipality, only citizens of the United States shall be employed; and in all cases where laborers are employed on any such public works, preference shall be given citizens of the State of New York".

[5] The Court stated at 239 U.S. 43 that "no special public interest with respect to any particular business is shown that could possibly support the enactment, for as we have said it relates to every sort".

nothing to diminish the effect of the *McCready-Crane* doctrine and in fact specifically cited *McCready* and some of its progeny with approval. See 239 U.S. at p. 40.

More recently, in *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948), also relied upon by the plaintiff, the Court cited with approval the standards enunciated in *Truax* and invalidated a California law forbidding Japanese aliens from commercial fishing off the California coast on the ground that the state had not demonstrated a "special public interest" in regulating Takahashi's commercial fishing. It is true that in *Takahashi* the Court recognized the technical possibility that California might in some sense "own" those fish which ventured inside the three-mile ocean limit,[6] but the Court treated the California law as a regulation of aliens in private enterprise under the *Truax* test and left untouched the *McCready-Crane* doctrine.

I have not found, nor do I find in *Shapiro v. Thompson,*[7] supra, or *Goldberg v. Kelly,* 397 U.S.

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[6] The law in question barred all aliens residing in California from commercial fishing off the California coast, whether within or without the three-mile limit.

[7] *Shapiro* was decided on the ground of interference with the right of interstate movement and has already been discussed on that ground. We note in passing that contrary to the plaintiffs' assertions, the "compelling state interest" required to justify state legislation relating to interstate movement in *Shapiro* does not apply to cases involving welfare legislation. *Dandridge v. Williams,* 397 U.S. 471 (1970).

254 (1970),[8] cited by the plaintiffs (neither of which relates to aliens) any indication that the Court has overruled the doctrine of *Crane* and *Truax*[9] that while the state, absent a special state interest, is not

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[8] In *Goldberg,* the Court held that whether welfare was considered as a privilege or a right, it could not be terminated without a fair hearing. However, subsequently in *Dandridge v. Williams,* supra, the Court intimated that the holding in *Goldberg* was not intended to affect state determination of welfare eligibility:

> "The constitution may impose certain procedural safeguards upon systems of welfare administration . . . (citing Goldberg) *But the constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients.*" (Emphasis mine) 397 U.S. 471, 487 (1970).

[9] I do not see anything in *Takahashi, supra,* at p. 420 to the effect that because state legislation relating to aliens affects a "disadvantaged minority" it is therefore subject to "strict judicial scrutiny" apart from the ordinary "rational basis" test ordinarily applied to state welfare legislation. *Cf. Dandridge v. Williams,* 397 U.S. 471 (1970). At that point in *Takahashi, supra,* the Court in effect points out that in view of the general rule enunciated in *Yick Wo v. Hopkins, supra,* the superseding effect of federal laws regulating aliens, *Hines v. Davidowitz,* 312 U.S. 52 (1941), and 8 U.S.C. §41, the power of the states to pass laws relating to aliens is limited. Both parties here concede this. Moreover, the Court in *Takahashi,* supra, was making the point, with which all are in agreement, that pursuant to its powers to regulate aliens, Congress can make certain distinctions which the states cannot. Accordingly, the compelling state interest required to justify state legislation inhibiting an alien's right to travel, *Cf. Shapiro v. Thompson, supra,* or to legislation affecting a "disadvantaged minority" would be inapplicable here.

permitted to intrude upon an alien's right to "enter and abide" by statutes which discriminate against them as opposed to citizens in the conduct of ordinary private enterprise, the state as proprietor of the resources of the citizens of the state may favor its own citizens in the disbursement of those resources. [10] Being mindful of the recent admonition of the Supreme Court that the *"Fourteenth Amendment gives the federal courts no power to impose on the states their views of wise economic or social policy"* [11], I would not overturn what I consider to be a settled precedent.

Plaintiffs' final contention is that Pennsylvania's general assistance citizenship requirement conflicts with federal laws relating to the admission and naturalization of aliens and is therefore preempted pursuant to the supremacy clause. We are specifically directed to several provisions of federal law relating to the admission of indigents to this country: Title 18 U.S.C. §§7, 8 and 15 provide *inter alia* that the following classes of aliens shall be excluded from admission: "paupers", "aliens . . . who are likely at any time to become public charges", and "aliens . . . who are certified . . . as having a physical defect, disease, or disability . . . of such a nature that it may affect the ability of the alien to earn a living. . . ." Section 1251 allows the Attorney General under cer-

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[10] This distinction was cited with approval by the Supreme Court as recently as 1960 in *Cafeteria Workers v. McElroy*, 367 U.S. 886 (1961).

[11] (Emphasis mine) *Dandridge v. Williams, supra,* at p. 486 (1970).

tain circumstances to deport an alien who has become a public charge. Section 1183 provides that an alien excludible because he is likely to become a public charge may be admitted at the discretion of the Attorney General after posting a bond.

I take the standard for determining whether a state law relating to aliens is preempted by federal law from *Hines v. Davidowitz*, 312 U.S. 52 (1941). In that case, where the Court invalidated a Pennsylvania alien registration law because it overlapped federal law, Justice Black stated *inter alia* that:

> ". . . where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail, or complement, the federal law, or enforce additional or auxiliary regulations." 312 U.S. 66-7.

It was further stated that any concurrent power in such a field must be "restricted to the narrowest of limits", 312 U.S. at 68, but that "in the final analysis, there can be no one crystal-clear distinctly marked formula" for determining whether the state law is inconsistent with federal law:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress". 312 U.S. at 67.

In the light of these standards I cannot conclude that Pennsylvania's citizenship requirement is preempted by federal law. *Hines* and the other cases relied upon by the plaintiffs were concerned with requirements under state law which would hinder, obstruct, or harass aliens in such a way as to interfere with the federal scheme of regulation. Pennsylvania's citizenship requirement does not regulate the conduct of aliens, but rather excludes them from an affirmative benefit which the state may or may not decide to dispense to its own citizens. If the state had no welfare program at all, federal laws relating to aliens would not be obstructed; it is difficult to see how federal laws are obstructed any more because the state decides to give welfare payments to citizens.

By the same token, I am unable to conclude that the specific statutory provisions cited previously and relied on by the plaintiffs evidence any Congressional intent to require the states to include (or, for that matter, not to include) aliens as beneficiaries of their welfare programs. To the contrary, the federal laws cited previously leave the impression that Congress wanted to relieve the states (and the federal government) of the burden of aliens who were, or might become, public charges. I cannot infer from such an intent to relieve the states of such a burden, a corresponding intent to require the states to pay welfare to aliens.

Accordingly, I respectfully dissent.

Harold K. Wood

J.

APPENDIX "B"

PUBLIC WELFARE CODE

§432. Eligibility

Except as hereinafter otherwise provided, and subject to the rules, regulations and standards established by the department, both as to eligibility for assistance and as to its nature and extent, needy persons of the classes defined in clauses (1) and (2) of this section shall be eligible for assistance:

(1) Persons for whose assistance Federal financial participation is available to the Commonwealth as old-age assistance, aid to the blind, aid to families with dependent children, aid to the permanently and totally disabled, or as other assistance, and which assistance is not precluded by other provisions of law.

(2) Other persons who are citizens of the United States, or who, during the period January 1, 1938 to December 31, 1939, filed their declaration of intention to become citizens.

(3) Assistance other than Federal-State blind pension shall not be granted (i) to or in behalf of any person who disposed of his real or personal property, of the value of five hundred dollars ($500), or more without fair consideration, within two years immediately preceding the date of application for assistance; (ii) to an inmate of a public institution; or (iii) in

behalf of an inmate of a public institution, unless he is a patient in a medical institution who is eligible for aid to the permanently and totally disabled.

(4) Federal-State blind pension shall be granted only to or in behalf of any person who (i) is twenty-one years of age or older and meets the requirement as to residence prescribed in clause (6) of this section; (ii) has three-sixtieths or ten-two hundredths, or less, normal vision; (iii) is not an inmate of a public institution (except as a patient in a medical institution), a penal institution, or a hospital for mental disease; (iv) does not own real or personal property of a combined value of more than five thousand dollars ($5000); (v) does not own nonresident real or personal property of a combined value of more than one thousand five hundred dollars ($1500); (vi) has not disposed of any property without fair consideration within the two years immediately preceding the date of application for Federal-State blind pension, or while receiving such pension, if ownership of such property, would render him ineligible for such pension; (vii) does not have actual annual income of his own of two thousand eight hundred eighty dollars ($2880) or more, disregarding any amounts of such income equal to the expenses reasonably attributable to the earning of the income, and disregarding also the first eighty-five dollars ($85) per month of earned income plus one-half of earned income in excess of eighty-five dollars ($85) per month; and (viii) has total recognized needs of a monthly amount exceeding the amount of his monthly net income.

(5) With respect to the determination of eligibility for and provision of Federal-State blind pension grants (i) the value of resident real property shall be deemed to be its assessed value minus encumbrances; the value of nonresident real property shall be deemed to be its market value minus encumbrances; the value of personal property shall be deemed to be its actual value; and interest in property owned by the entireties shall be deemed to be a one-half interest; (ii) notwithstanding any other provisions of law, no relative shall be required to make monetary or any other payments or contributions for the support or maintenance of the blind person but the income and property of the blind person's spouse living with the blind person shall be considered in determining eligibility of the blind person; (iii) monthly net income shall be the actual monthly income less the amounts disregarded in accordance with the provisions of subclause (vii) of clause (4) of this section; and (iv) the department shall determine minimum basic needs, special needs and total recognized needs of blind persons and the monthly amount of Federal-State blind pension paid to an eligible person shall be the excess of his monthly total recognized needs over his monthly net income, not exceeding the maximum amount determined by the department on the basis of the funds available for Federal-State blind pension; (v) notwithstanding any other provisions of law, no repayment shall be required of any Federal-State blind pension for which a blind person was eligible; (vi) all Federal funds received by the Commonwealth for assistance paid as Federal-State blind pension shall be used only for

grants to or in behalf of persons eligible for Federal-State blind pension.

(6) Assistance may be granted only to or in behalf of a person residing in Pennsylvania who (i) has resided therein for at least one year immediately preceding the date of application; (ii) last resided in a state which, by law, regulation or reciprocal agreement with Pennsylvania grants public assistance to or in behalf of a person who has resided in such state for less than one year; (iii) is a married woman residing with a husband who meets the requirement prescribed in subclause (i) or (ii) of this clause; or (iv) is a child less than one year of age whose parent, or relative with whom he is residing, meets the requirement prescribed in subclause (i), (ii) or (iii) of this clause or resided in Pennsylvania for at least one year immediately preceding the child's birth. Needy persons who do not meet any of the requirements stated in this clause and who are transients or without residence in any state, may be granted assistance in accordance with rules, regulation and standards established by the department. 1967, June 13, P. L. ——, No. 21, art. 4, §432.

Historical Note

This section is similar to former section 2508.1 of this title, derived from Act 1937, June 24, P. L. 2051, §8.1 added 1965, Aug. 26, P. L. 389, §6.

The matter of eligibility for assistance was also covered in former section 2509 of this title. It was derived from Acts:

1937, June 24, P. L. 2051, §9.
1939, June 26, P. L. 1091, §3.

No. 727

Motion to affirm not printed.